

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania State Senator
Andrew E. Dinniman**

**Public Meeting June 14, 2018
3001453-OSA
Docket No. C-2018-3001451
P-2018-3001453**

v.

Sunoco Pipeline, L.P.

**JOINT STATEMENT OF COMMISSIONERS JOHN F. COLEMAN, JR. AND
NORMAN J. KENNARD**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Interim Emergency Order and Certification of Material Question issued by Administrative Law Judge (ALJ) Elizabeth Barnes on May 24, 2018, in the above captioned, consolidated proceeding.

The Interim Emergency Order granted the Petition of Senator Dinniman requesting interim emergency relief and is now before the Commission for disposition consistent with our regulations.¹ Briefs in support and opposition to the Interim Emergency Order were filed by the parties to the proceeding.

Based on a review of the record and briefs, we agree with the proposed motion to resume service on Mariner East 1 (ME1) for the reasons set forth in the motion. However, we do not agree with the proposed motion on standing and do not agree with upholding the stay of construction on Mariner East 2 (ME2) and Mariner East 2X (ME2X). Therefore, we would answer the material question in the negative, reverse the Interim Emergency Order, and return the matter to the Office of Administrative Law Judge for further proceedings on the underlying Formal Complaint at this consolidated docket.

Standing

We do not agree with the Interim Emergency Order that Senator Dinniman has representational standing in his official capacity as a senator representing the interests of the residents of West Whiteland Township to seek the interim emergency relief requested in the Complaint. When determining whether an individual has legislative standing, the relevant case precedent focuses on whether a denial of the relief requested would impair the performance of the individual's legislative duties.²

¹ 52 Pa. Code §3.10(b).

² *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016), citing *Fumo v. City of Philadelphia*, 972 A.2d 487, 502 (Pa. 2009).

Here, Senator Dinniman has not shown any specific legislative duty that would be impaired if interim emergency relief is not granted. Specifically, the ALJ found that “Senator Dinniman’s interest is direct because it will be adversely affected by the actions challenged in this Complaint and Emergency Petition.” *Interim Emergency Order* at 6. However, the Senator’s interest in serving on “several committees that address water issues[, and his] personal knowledge of the subject matter and [having] the responsibility of commenting on or approving expenditures related to water resources in Chester County[,]” are not legislative duties that are diminished or impaired in any way by the operation of ME1 and construction of ME2 and 2X. The Senator’s performance of each specified duty is not impacted by the denial of emergency relief in this case.

Although we do not believe Senator Dinniman has legislative standing to seek the emergency relief requested in the Complaint, the Senator may have standing in a personal capacity. To have such standing, the Senator’s interest in the proceeding must be direct, immediate, and substantial.³ Therefore, we would return the issue of Senator Dinniman’s personal standing to the ALJ for review, consistent with a more fully developed record on the impact to Senator Dinniman as a property owner and resident of West Whiteland Township.

Emergency Relief

To obtain interim emergency relief from the Commission, a petitioner must prove that *all* of the following four elements are met: (1) his right to relief is clear (i.e., that he has raised substantial legal questions); (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public interest.⁴

We acknowledge that Senator Dinniman has raised substantial legal questions here, and we understand the safety concerns expressed by him and others about ME2 and ME2X. Upon review of the record evidence, however, the Senator has not shown that there is an *immediate* safety threat that warrants halting construction on ME2 and ME2X. Therefore, we do not believe the Senator has met his burden of proof for interim emergency relief.

In the Interim Emergency Order, the ALJ found that the need for injunctive relief was immediate on ME2 and ME2X because she was persuaded by the evidence presented by Senator Dinniman and his expert regarding pipeline leaks, inadvertent return issues, and Pennsylvania Department of Environmental Protection (DEP) regulation violations. *Interim Emergency Order* at 17. The ALJ also primarily determined that the need for injunctive relief was immediate based on an incident involving Sunoco Pipeline L.P.’s (Sunoco) use of unqualified welders in the state of Texas in 2016. *Id.* Further, the ALJ found that Senator Dinniman established an immediate need for relief based on *potential* threats to water sources in West Whiteland Township, including aquifer and private wells issues resulting from subsidence or sink holes related to Sunoco’s construction practices on ME2 and ME2X. *Id.* at 13.

³ *Ken R. ex rel. C.R. v. Arthur Z.*, 546 Pa. 49, 682 A.2d 1267 (1996); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975).

⁴ 52 Pa. Code. § 3.6.

We do not agree with the ALJ's determination that there is substantial, competent evidence that an immediate danger exists with the construction of ME2 and ME2X. First, the hearing transcript is devoid of any expert witness testimony that, to a reasonable degree of scientific certainty, there is a credible and immediate harm with the construction of these lines. In fact, the Senator's own expert witness expressly denied having an opinion within a reasonable degree of scientific certainty regarding inadvertent returns or that any sinkholes would be created by the remaining construction in West Whiteland Township.⁵ This same witness also admitted that he did not review the geophysical data beyond Lisa Drive, nor did he profess to know the cause of the subsidence and sinkholes within the Township.⁶ Further, the Senator's witness confessed that he possessed a "somewhat primitive" understanding of horizontal directional drilling (Tr. at 265), and perhaps most tellingly, that he lacked personal knowledge of the proposed construction to be undertaken in the Township.⁷ What is more, this same witness conceded that it is possible to construct a pipeline in karst formations.⁸ As such, there is no credible *evidence of record* to indicate that a clear and present danger exists with respect to the construction activities on ME2 and ME2X in West Whiteland Township.

Second, the events in Texas occurring over two years ago are not linked to the events in Pennsylvania concerning the Mariner project and have no relevance to a finding of immediate harm in the matter before us. Therefore, we do not believe it is appropriate to rely on these events as a basis to conclude that the construction of ME2 and ME2X is an immediate threat in West Whiteland Township.

Third, we do not find that an *immediate* danger can, *by definition*, exist with respect to the ME2 and ME2X pipelines as Sunoco cannot currently engage in construction activities on these lines in West Whiteland Township until it receives certain drilling permits from DEP. Nevertheless, even if Sunoco does obtain the appropriate drilling permits from DEP in the future, the water quality-related issues upon which the ALJ relies appear to be within DEP's jurisdiction, not the Commission's. To the extent that the relevant water-quality issues may come within our jurisdiction to ensure that Sunoco provides safe and reasonable public utility service,⁹ we do not believe that the water quality issues alleged thus far in this proceeding rise to the level of an immediate danger.

In any event, Pennsylvanians should know that pipeline safety is a top priority of this Commission. To that end, we believe that the motion does not adequately account for the fact that the Commission has in-house pipeline safety experts who have been, and will continue to, actively monitor the construction of ME2 and ME2X.

The Pipeline Safety Division, within the Commission's Bureau of Investigation and Enforcement, works in coordination with the Pipeline and Hazardous Materials Safety Administration or PHMSA to enforce all applicable pipeline safety regulations, including those

⁵ Tr. at 289-290.

⁶ Tr. at 281-282.

⁷ Tr. at 285-287.

⁸ Tr. at 287.

⁹ 66 Pa. C.S. § 1501.

applicable to the operation of ME1 and to the construction of ME2 and ME2X. In short, the personnel in our Pipeline Safety Division are the Commission's "boots on the ground" to administer pipeline safety regulations.

The Commission's Pipeline Safety Division played a key role in the investigation and resolution of a safety issue that arose with ME1 on Lisa Drive in West Whiteland Township, Chester County, PA. It was that safety issue which lead to a request from our Pipeline Safety Division on March 7, 2018 to temporarily stop service on ME1, pending an investigation. The Commission granted the request but reinstated service on ME1 on May 3, 2018, based primarily on our Pipeline Safety Division's agreement, following extensive testing and analysis, that it was safe to resume service. This proceeding shows that the Commission's own pipeline safety experts are actively and fully engaged with Sunoco's Mariner project and are ready, willing, and able to take the necessary steps to protect the public when it comes to safety.

Our Pipeline Safety Division also has played a key role in helping ensure the safe construction of ME2 and ME2X. As noted in the Commission's written testimony before the Pennsylvania Senate,¹⁰ our Pipeline Safety Division devoted significant resources over the past several years to Sunoco and its Mariner Project. Our Pipeline Safety Division spent 76 inspection days during 2017 on the Mariner project. Our inspectors are continuing this rigorous inspection program throughout construction. The Commission also will continue to monitor and inspect the Mariner project after construction is completed, consistent with our duties to enforce the federal pipeline safety laws.

To date, the Commission's pipeline safety experts have not reported any safety issues that warrant halting the construction of ME2 and ME2X. However, as our experience with ME1 shows, we have full confidence that our Pipeline Safety Division will take the necessary steps to protect the public if a safety issue arises with the project. Nevertheless, out of an abundance of caution, we request that our Pipeline Safety Division review the transcript in this matter and take whatever action, if any, it deems warranted.

For these reasons, we do not support the proposed motion.



JOHN F. COLEMAN, JR.
COMMISSIONER



NORMAN J. KENNARD
COMMISSIONER

Date: June 14, 2018

¹⁰ Specifically, the Commission's written testimony for a March 2018 hearing on pipeline safety conducted by two Pennsylvania Senate committees.